

APPEAL NO. 040377
FILED MARCH 30, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 30, 2003. The issue at the CCH was the claimant's average weekly wage (AWW). In Texas Workers' Compensation Commission Appeal No. 032176, decided October 1, 2003, the Appeals Panel reversed the hearing officer's decision that the claimant's AWW is \$109.36 and remanded the case to the hearing officer for further consideration and development of the evidence on the AWW issue. A CCH on remand was held on January 16, 2004, and in the decision on remand, the hearing officer determined that the claimant's AWW is \$129.55. The claimant appeals, contending that his AWW is \$340.00. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed.

Conflicting evidence was presented on the disputed issue of the claimant's AWW. After further considering and developing the evidence, the hearing officer determined that under Section 408.041(a) the claimant's AWW is \$129.55. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer based her decision on remand on actual wage information provided in the carrier's exhibits that were admitted at the July 30, 2003, CCH. The claimant asserts that the hearing officer erred in relying on the carrier's exhibits. Since the claimant did not object to the admission of the carrier's exhibits at the CCH, he did not preserve any objection for review on appeal (the claimant was asked at the July 30, 2003, CCH if he had any objection to the carrier's exhibits and he said he did not). We also disagree with the claimant's assertion that an AWW issue was not raised because the parties agreed at the CCH that the disputed issue was the claimant's AWW and the benefit review conference report reflects that the disputed issue was the claimant's AWW. It appears that the claimant, the carrier, and the hearing officer are all of the opinion that the Employer's Wage Statement (TWCC-3) contains some incorrect information (as was pointed out in Appeal No. 032176, *supra*). Since the TWCC-3 was inaccurate, the hearing officer in her decision on remand relied on other wage information that was provided at the CCH to determine the claimant's AWW and we perceive no error in her doing so. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order on remand.

The true corporate name of the insurance carrier is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge